Teamsters, Chauffeurs & Helpers Local Union No. 40, a/w International Brotherhood of Teamsters, AFL–CIO *and* Customized Transportation, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Region 2, and its Local Union No. 101. Case 8–CD–465

December 14, 1998

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

The charge in this Section 10(k) proceeding was filed on June 8, 1998, by Customized Transportation, Inc. (CTI or the Employer), alleging that the Respondent, Teamsters, Chauffeurs & Helpers Local Union No. 40, a/w International Brotherhood of Teamsters, AFL–CIO (Respondent or Teamsters Local 40) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Region 2, and its Local Union No. 101 (UAW Local 101). The hearing was held on August 11 and 12, 1998, before Hearing Officer Susan Fernandez.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error.[1] On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a Delaware corporation, with a place of business in Huron, Ohio, is a contract carrier engaged in the interstate transportation of freight. In the course and conduct of its business operations, the Employer annually derives gross income in excess of $50,000 from the transportation of automotive parts from suppliers in Michigan, Indiana, Illinois, and Ohio to Ford Motor Company (Ford) plants located in Northeast Ohio. We accordingly find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find, based on the stipulation of the parties, that Teamsters Local 40 and UAW Local 101 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

In 1996, the Employer maintained two facilities in Ohio. The first facility was located in Lorain, Ohio. Drivers represented by UAW Local 101 worked exclusively out of this location. The UAW-represented drivers performed, inter alia, "milk runs" by picking up automotive parts from various suppliers and delivering the parts directly to a Ford assembly plant in Lorain. The Employer's Lorain facility had no dock or warehouse but was only a dispatch location. The UAW-represented employees, therefore, did not perform dock work.

The second facility operated by the Employer was located in Mansfield, Ohio. Drivers represented by Teamsters Local 40 worked exclusively out of this location. The Teamsters-represented drivers performed milk runs by delivering automotive parts to a Ford assembly plant in Avon Lake, Ohio. The Mansfield terminal had a dock and a warehouse, and Teamsters-represented employees performed the dock work. Ford accounted for 100 percent of the Employer's business at its Mansfield and Lorain locations.

In August 1997, the Employer closed its Lorain facility and informed UAW Local 40 that the drivers would be transferred to the Mansfield location. The closure was essentially at the behest of Ford, and was based on two considerations. First, Ford was ceasing production of certain automobile models at its Lorain plant. The Employer's UAW-represented drivers had delivered parts for those models from the Employer's Lorain facility. Second, Ford sought to eliminate duplicative milk runs by UAW-represented drivers and Teamsters-represented drivers to the same suppliers. In order to reduce costs, Ford desired that only one truck stop at a particular supplier regardless of whether the parts were ultimately destined for the Lorain or Avon Lake plant; that the parts all be delivered to the Employer's Mansfield facility; and that the parts then be sorted for delivery to the respective Ford plants under a process known as "cross docking." The Employer's Mansfield location had cross dock capability while, as noted above, the Employer's Lorain facility did not have a dock.

1. Assignment of milk runs at Mansfield

Employer personnel along with a Ford engineer devised a method to divide the Mansfield milk runs between the two groups of employees. The Employer determined that the percentage of freight bound for the Ford plants would be the determinative factor as to whether the milk run would be driven by a UAW-represented driver or a Teamsters-represented driver. A UAW-represented driver would perform the milk run if the majority of the freight was bound for the Ford Lorain plant (formerly serviced by UAW-represented drivers). A Teamsters-represented driver would perform the milk run if the majority of the freight was bound for the Ford Avon Lake plant (formerly serviced by Teamsters-represented drivers). Following the milk run, the parts would be brought to the Employer's Mansfield facility for cross-docking and delivery to the appropriate Ford

[1] We grant the Employer's motion to correct the transcript.

plant. Teamsters-represented employees continued to perform the dock work at Mansfield.

2. The Employer closes the Mansfield facility and opens the Huron facility

In March 1998 the Employer closed its Mansfield facility and transferred drivers represented by both Unions to a newly acquired facility located in Huron, Ohio. This move was made at Ford's directive as a cost reduction measure. The Employer bills Ford on a cost-per-mile basis, and Huron is located closer to Ford's plants than the Employer's Mansfield facility. In assigning milk runs at the Huron location, the Employer used the same percentage of freight/point of delivery method it had utilized at the Mansfield facility after the closure of its Lorain facility. Teamsters-represented employees continued exclusively to handle the dock work at Huron, as they had done at the Mansfield location.

In April 1998, UAW Local 101 filed a grievance asserting that the Employer was assigning dock work and driving duties in violation of the collective-bargaining agreement between the Employer and the UAW. The grievance was pending at the time of the hearing in this proceeding. By letter to the Employer dated May 29, 1998, Teamsters Local 40 President Givens asserted that the UAW by its grievance was claiming Teamsters' work, and warned that Teamsters Local 40 would take immediate economic action against the Employer if it assigned that work to UAW Local 101.

B. *The Work in Dispute*

The work in dispute concerns the assignment of the dock work at the Employer's Huron, Ohio facility, and the assignment of milk run driving routes out of the Huron facility.[2]

C. *Contentions of the Parties*[3]

1. The Employer

The Employer contends that, by measuring the majority of freight based on point of delivery, it has developed a fair and neutral method for determining which set of union-represented employees would be awarded the disputed milk runs at the new Huron facility. The Employer requests that the Board make an award affirming its current method of assigning the disputed milk run work. The Employer argues that such an award is supported by past practice, Employer preference, and economy and efficiency of operations.

The Employer argues that an award of the disputed dock work to Teamsters-represented employees is supported by past practice, skills and training, and Employer preference. It points out that Teamsters-represented employees have exclusively performed dock work at the Mansfield and Huron locations, while UAW-represented employees have never performed dock work at any of the three locations implicated in this proceeding. Further, the Teamsters-represented dock employees have received forklift training and are certified to operate that equipment, while there is no evidence that UAW-represented employees possess those qualifications.

2. UAW Local 101

UAW Local 101 argues that the disputed dock work and milk run driving work should be awarded to UAW-represented employees based on the factors of certification and its collective-bargaining agreement with the Employer. UAW Local 101 further argues that the factors of Employer preference and past practice should not be relied on in this proceeding, because the method the Employer devised for assigning the milk runs is neither fair nor accurate. Finally, UAW Local 101 contends that the selection of UAW-represented or Teamsters-represented employees has no impact on the Employer's economy and efficiency of operations because the Employer need only satisfy Ford's directive to eliminate redundant milk runs and cross dock parts.

D. *Applicability of the Statute*

Before the Board may proceed with determining a dispute pursuant to Section 10(k) of the Act, two jurisdictional prerequisites must be met. First, the Board must find reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. Second, the Board must find that the parties have failed to agree on a method for voluntary adjustment of the dispute.

These jurisdictional prerequisites have been met in this case. Both Teamsters Local 40 and UAW Local 101 claim the work in dispute.[4] Further, the invocation of grievance-arbitration procedures by UAW Local 101 against the Employer constitutes a demand for the disputed work. See, e.g., *Iron Workers Local Union 8 (Selmer Co.)*, 291 NLRB 222 (1990). Teamsters Local 40 thereafter threatened that it would take immediate economic action against the Employer if the work of Teamsters-represented employees were reassigned to UAW-represented employees. We accordingly find reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. Further, the parties stipulated that they have not agreed on a method to adjust this dispute voluntarily. We thus find that the Board has jurisdiction to resolve this dispute.

[2] The work in dispute is broader than that set forth in the Board's notice of hearing, which referred only to driving assignments. The Board may after examining the evidence, broaden the work in dispute beyond what is contained in the notice of 10(k) hearing. *Construction & General Laborers Local 146 (Modern Acoustics)*, 267 NLRB 1123, 1124 (1983). The evidence showed that the dispute was not limited to driving assignments but also encompassed dock work.

[3] Teamsters Local 40 did not file a brief with the Board.

[4] Although Teamsters Local 40 claims all the dock work, it is willing to accede to the Employer's current method for the assignment of the milk runs. UAW Local 101 claims all the dock work and all the milk run work.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting),* 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J.A. Jones Construction),* 135 NLRB 1402, 1410–1411 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

The bargaining unit descriptions in the Employer's contracts with both Unions include both drivers and dock workers. The recognition clause in the collective-bargaining agreement between the Employer and UAW Local 101 provides that the Employer "frequently changes locations" and that "work covered under this Agreement is recognized as within the jurisdiction of the UAW and is covered under this agreement." The recognition clause in the collective-bargaining agreement between the Employer and Teamsters Local 40 provides that the "terms of this Agreement shall apply to all employees in the classifications set forth herein located at 792 Fifth Avenue, Mansfield, Ohio," and further states that "the provisions of this Agreement shall remain consistent with the growth of Employer's Ford Motor Company business in the State of Ohio." Thus, the Employer's contracts with both Unions contain provisions extending recognition to new locations in the event that the Employer's business grows and changes, which is what occurred here when the Employer relocated to Huron. We accordingly find that the factor of collective-bargaining agreements is not helpful in awarding the disputed milk run work or the disputed dock work.

Both Unions have been certified by the Board as the collective-bargaining representative of their respective bargaining units. Each certification covers drivers. Accordingly, the factor of certifications does not favor an award of the disputed driving work to either group of employees.

The certification of Teamsters Local 40 additionally specifically covers warehousemen, who perform the disputed dock work, while the certification of UAW Local 101 is limited to drivers. UAW Local 101 nevertheless asserts that the description of the bargaining unit in its contract specifically includes dock workers as well as drivers, and thus the factor of certifications should not be construed as favoring an award of the disputed dock work to Teamsters Local 40. We must reject this contention because only the certification of Teamsters Local 40 specifically encompasses the employees actually performing the dock work and the UAW-represented employees have never performed that work. Accordingly, we find that the factor of certifications favors an award of the disputed dock work to Teamsters-represented employees.

2. Area and industry practice

No evidence was adduced at the hearing regarding the area and industry practice with respect to the work in dispute. We accordingly find that this factor is not helpful in determining the dispute.

3. Employer's past practice

It is undisputed that Teamsters-represented employees have exclusively performed the dock work at both the Employer's Mansfield and Huron locations. There is also no dispute that UAW-represented employees never performed dock work at either of those locations, or at the Lorain location which did not have a dock. The Employer's past practice accordingly favors an award of the disputed dock work to the Teamsters-represented employees.

With respect to the disputed milk run driving work, the Employer's past practice prior to the closure of the Lorain facility was that UAW-represented drivers primarily made deliveries to the Ford Lorain plant, and Teamsters-represented drivers primarily made deliveries to the Ford Avon Lake plant. After the closure of the Lorain facility, the Employer began using a percentage of freight/point of delivery assignment method. This system of work assignment is consistent with the Employer's past practice, because milk runs with majority freight bound for Ford's Lorain plant are assigned to UAW-represented drivers, and milk runs with majority freight bound for Ford's Avon Lake plant are assigned to Teamsters-represented drivers. When the Employer closed the Mansfield operation and opened the new facility in Huron, the Employer continued to use the same system for assigning milk runs. Accordingly, we find that the factor of past practice favors an award of the disputed milk run work to both groups of employees according to the Employer's percentage of freight/point of delivery method.

4. Economy and efficiency of operations

The Employer's vice president of administration, Fred Griffiths, testified at the hearing that the Employer's sole issue with respect to economy and efficiency was that it comply with Ford's directive that it cross dock parts and eliminate duplicative milk runs. The clear implication of Griffiths' testimony is that the work in dispute may be assigned to employees represented by either Union so long as these efficiency objectives are accomplished. We accordingly find that this factor does not favor an award of the disputed milk run work or the disputed dock work to either group of employees.

5. Employer preference and current assignment

The Employer's current assignment and preference is that the disputed dock work be performed by employees

represented by Teamsters Local 40. These factors accordingly favor assignment of the disputed dock work to Teamsters-represented employees.

The Employer's current assignment and preference is that the disputed milk run driving work be allocated between the UAW-represented employees and the Teamsters-represented employees pursuant to the Employer's percentage of freight/point of delivery method. These factors accordingly favor assignment of the disputed milk run driving work to both groups of employees utilizing that method.

6. Relative skills and training

The Employer's vice president for administration Griffiths testified that drivers represented by both Unions possess the same qualifications. We accordingly find that this factor is not helpful in determining assignment of the disputed milk run driving work.

Griffiths further testified that all Teamsters-represented dock workers have received training in operating a forklift and are certified to do so. There is no record evidence that UAW-represented employees possess such qualifications. We accordingly conclude that the factor of relative skills and training favors an award of the disputed dock work to employees represented by Teamsters Local 40.

Conclusions

After considering all the relevant factors, we conclude that CTI's employees represented by Teamsters Local 40 are entitled to perform the dock work in dispute. We reach this conclusion relying on the factors of certifications, past practice, skills and training, current assignment, and Employer preference.

We further conclude after considering all the relevant factors that the disputed milk run driving work should be assigned to employees represented by Teamsters Local 40 and to employees represented by UAW Local 101 according to the Employer's percentage of freight/point of delivery method. We reach this conclusion relying on the factors of past practice, current assignment, and Employer preference.[5]

In making these determinations, we are awarding the disputed work to employees represented by the above Unions, not to those Unions or their members.

Scope of the Award

The Employer asserts that a broad award is necessary to avoid future jurisdictional disputes regarding the milk runs. The record, however, does not support the granting of a broad award under the factors we traditionally apply. See, e.g., *Teamsters Local 104 IBEW (Standard Sign)*, 248 NLRB 1144, 1148 (1980) (evidence that the work in dispute has been a continuous source of controversy in geographic area, evidence that similar disputes may recur, and evidence that charged union has a proclivity to violate the Act to obtain similar work). Accordingly, we find that a broad award is not warranted, and the determination is limited to the particular controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Customized Transportation, Inc., represented by Teamsters, Chauffeurs & Helpers Local Union No. 40, a/w International Brotherhood of Teamsters, AFL–CIO, are entitled to perform dock work at the Employer's Huron, Ohio facility.

Employees of Customized Transportation, Inc., represented by Teamsters, Chauffeurs & Helpers Local Union No. 40, a/w International Brotherhood of Teamsters, AFL–CIO, and employees of Customized Transportation, Inc., represented by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Region 2, and its Local Union No. 101, are entitled to perform milk run driving routes out of the Employer's Huron, Ohio facility according to the Employer's percentage of freight/point of delivery assignment method.

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[5] Although the Board usually awards disputed work to the employees represented by one union to the exclusion of employees represented by the other union, "it is within the Board's power to preserve in the Employer the right to assign the work, in accordance with its past practices, to employees represented by either Union . . . depending on the circumstances confronting the Employer when the work must be done." *Harley-Davidson Motor Co.*, 234 NLRB 1121, 1124 (1978), citing *Machinists, Lodge 70 (General Electric Co.)*, 233 NLRB 356, 359 (1977). For the reasons set forth above, we find such an award to be appropriate in the unusual circumstances of this case.